

238. Furthermore, at all relevant times, DTV and/or RCA had notice and knowledge that *DISH Network* sought to enter into such economic relationships with owners of the rights to sports programming.
239. As a direct and proximate result of the inducements and threats by DTV and RCA set forth herein, which are continuing, such retailers and prospective retailers of consumer electronic goods, and owners of sports programming, have not entered into economic relationships with *DISH Network* that they otherwise would have entered into and/or have cut off existing economic relationships with *DISH Network*.
240. DTV and RCA made such inducements and threats with the conscious intent, maliciously, willfully, intentionally, wrongfully, tortiously and wantonly, to injure *DISH Network* in its trade or business, in part in Colorado, and not with any intent to compete legitimately.
241. The actions of DTV and RCA have no legitimate business purpose and were without any privilege or justification.
242. Moreover, these actions of DTV and RCA were intended to and do constitute, among other violations of law, an unlawful restraint of trade and an unlawful, and so far successful, attempt to acquire, maintain and/or consolidate monopoly power.
243. As a direct and proximate result of the conduct described herein, *DISH Network* has been damaged, and continues to be damaged, in its trade or business, in part in Colorado, and has suffered, and continues to suffer, monetary loss from lost sales of goods and services that would have been made but for DTV's tortious conduct and is threatened with continuing and irreparable damage and/or loss.

COUNT XVI

Violation of California Business and Professions Code § 17200

244. Plaintiffs hereby incorporate the above allegations as if fully set forth in this Count XVI of the Complaint.
245. *DISH Network* is a direct competitor of DTV in the High Power DBS equipment and service markets, in part in California.
246. DTV and RCA have committed and/or conspired to commit unfair business acts and business practices in California that offend established policy and are unethical, oppressive, unscrupulous and/or substantially injurious to consumers.
247. The acts and/or practices of DTV and RCA, committed in California and having a substantial effect on commerce, threaten an incipient violation of antitrust law and violate the policy and spirit of antitrust laws because their effects are comparable to or the same as a violation of antitrust laws and significantly threaten or harm competition.
248. *DISH Network* has suffered, and continues to suffer, injuries from such unfair acts and practices in violation of the California Business and Professions Code §§ 17200, et seq., and is threatened with continuing and irreparable damage and/or loss.
249. Plaintiffs hereby incorporate the above allegations as if fully set forth in this Count XVII of the Complaint.

COUNT XVII

Injurious Falsehood & Business Disparagement

250. Plaintiffs hereby incorporate the above allegations as if fully set forth in this Count XVII of the Complaint.

251. As alleged herein, DTV has made false statements regarding *DISH Network*.
252. These statements were published to third parties including retailers of High Power DBS equipment and actual and potential consumers of High Power DBS service.
253. In making these statements, DTV intended to injure *DISH Network's* pecuniary interests by attempting to convince retailers of High Power DBS equipment and actual and potential consumers of High Power DBS service not to deal with *DISH Network*.
254. HDTV recognized that the statements would likely injure and/or were intended to injure *DISH Network's* pecuniary interests.
255. Such statements were made maliciously, willfully and wanton.
256. DTV knew the statements were false at the time that it made the statements
257. *DISH Network* suffered, and continues to suffer, pecuniary loss and/or damage as a direct and proximate result of DTV's injurious falsehoods.

COUNT XVIII

Unfair Competition

258. Plaintiffs hereby incorporate the above allegations as if fully set forth in this Count XVIII of the Complaint.
259. DTV's actions are all illegal and intended to adversely affect the market position of *DISH Network*.
260. DTV's actions in disparaging *DISH Network*, in asking retailers and manufacturers to discriminate against and exclude *DISH Network* from the marketplace are improper and violate common law rules supporting competition and thus are intended to obtain an unfair competitive advantage.

261. *DISH Network* is entitled to fairly compete in the marketplace, and the acts and words of DTV as described in this Complaint are designed to unfairly attack, disparage and harm the reputation and business prospects of *DISH Network* for the sole purpose of providing DTV with an unfair advantage in competing for High Power DBS subscribers.
262. As a direct and proximate result of the improper acts of the defendants described herein, DTV has been able to unfairly maintain, exploit and consolidate its market position and has damaged the business reputation and competitive position of *DISH Network* which has suffered, and continues to suffer, monetary loss and/or damage to its goodwill for which it is entitled to monetary recovery.
263. *DISH Network* is also entitled to an injunction against DTV and the other defendants to enjoin this illegal conduct.

DEMAND FOR JURY TRIAL

264. Plaintiffs request that this matter be tried before a jury.

PRAYER FOR RELIEF

As relief on the foregoing claims, plaintiffs request that the Court and/or jury:

- A. Declare that the existing agreements between DTV, RCA, Hughes Network Systems, and/or other manufacturers and retailers, which preclude *DISH Network* from selling its product to retailers, violate Section Two of the Sherman Act, are illegal and unenforceable and that further adherence to these agreements is prohibited;

- B. Enjoin defendants, both preliminarily and permanently, from entering into or adhering to any agreements with retailers of High Power DBS receiving equipment whereby defendants, or any of them, would pay retailers or offer them other benefits in exchange for the retailer's promise not to carry the *DISH Network* service or any *DISH Network*-compatible equipment;
- C. Enjoin defendants, both preliminary and permanently, from engaging in predatory, anti-competitive conduct with the specific intent to destroy *DISH Network* as a competitor;
- D. Declare that the existing agreements between DTV, RCA and/or other manufacturers, in which RCA and/or other manufacturers of High Power DBS receiving equipment are prevented or prohibited from developing or manufacturing High Power DBS receiving equipment that is also capable of receiving *DISH Network* programming, violate Section One of the Sherman Act and are void;
- E. Enjoin defendants, both preliminarily and permanently, from threatening retailers of High Power DBS receiving equipment and services by refusing to permit such retailers to sell DTV-compatible receiving equipment or services unless the retailers agree not to carry the *DISH Network* or any *DISH Network*-compatible equipment;
- F. Declare that the agreements among DTV and RCA and/or other television manufacturers tying the sale of television sets to the purchase of High Power DBS receiving equipment compatible only with DTV High Power DBS service or

providing for the incorporation internally within the television sets of High Power DBS receiving equipment compatible only with DTV service, are illegal, and prohibit further adherence to these agreements;

- G. Enjoin DTV and RCA, both preliminarily and permanently, from entering into or adhering to any agreements tying the sale of television sets to the purchase of High Power DBS receiving equipment compatible only with DTV High Power DBS service, or providing for the incorporation internally within television sets of High Power DBS receiving equipment compatible only with DTV service;
- H. Enjoin DTV, both preliminarily and permanently, from entering into or adhering to any agreements with manufacturers of High Power DBS receiving equipment that preclude such manufacturers from producing *DISH Network*-compatible equipment, or from otherwise inducing or coercing such manufacturers not to produce *DISH Network*-compatible High Power DBS receiving equipment;
- I. Declare that the agreements between DTV and the NFL, the NBA and/or other sports leagues or providers of sports programming, under which *DISH Network* is precluded from a fair opportunity to compete for the rights to carry such programming, are illegal;
- J. Enjoin DTV, both preliminarily and permanently, from entering into or adhering to any agreements with the NFL, NBA and/or other sports leagues or providers of sports programming under which *DISH Network* is precluded from a fair opportunity to compete for the right to carry such programming;

- K. Enjoin DTV, both preliminarily and permanently, from making any false and/or misleading descriptions or representations of fact that misrepresent the nature, characteristics and/or qualities of *DISH Network's* goods, services or commercial activities;
- L. Order DTV to remove from its website or any other advertising material any false and/or misleading descriptions or representations of fact that misrepresent the nature, characteristics and/or qualities of *DISH Network's* goods, services or commercial activities;
- M. Enjoin DTV, both preliminarily and permanently, from passing off manufactured goods to consumers without revealing its own ownership interest in such manufacturers;
- N. Enjoin DTV, both preliminarily and permanently, from paying money to a manufacturer to induce it to build equipment that is suitable only for DTV-compatible satellite service;
- O. Order DTV and other defendants to provide to *DISH Network* an accounting of all profits obtained from the illegal activity described in this Complaint;
- P. Order defendants to pay in-kind those illegal profits to *DISH Network* or to the registry of the Court to be used for a public purpose;
- Q. Order defendants to pay to *DISH Network* damages in a sum necessary to compensate it for its loss of sales and/or damage to its goodwill and business reputation;

- R. Enjoin DTV, both preliminarily and permanently, from disparaging the goods, services, property and/or business of *DISH Network* by false and/or misleading misrepresentations of fact, or any other unfair competition or deceptive trade practices;
- S. Declare that the existing agreements between DTV, RCA and/or other manufacturers and retailers, which preclude *DISH Network* from selling its product to retailers, violate Section 6-4-105 of the Colorado Revised Statutes;
- T. Declare that the existing agreements between DTV, RCA and/or other manufacturers and retailers, which preclude *DISH Network* from selling its product to retailers, violate Section 6-4-104 of the Colorado Revised Statutes;
- U. Declare that DTV and RCA have tortiously interfered with the contractual relationships between *DISH Network* and various retailers, and award damages to *DISH Network* accordingly;
- V. Declare that DTV and RCA have tortiously interfered with the economic relationships, prospective contractual relations and/or business expectancy between *DISH Network* and various retailers, and award damages to *DISH Network* accordingly;
- W. Award *DISH Network* damages to compensate for the monetary loss of the sale of goods and services that would have been made but for DTV's tortious conduct;
- X. Declare that defendants have violated Section 17200 of the California Business and Professions Code;

- Y. Enjoin defendants, both preliminarily and permanently, from committing or conspiring to commit unfair business acts and business practices against *DISH Network* in California;
- Z. Enjoin DTV, both preliminarily and permanently, from making any disparaging or false statements regarding *DISH Network*;
- AA. Declare that defendants have engaged in unfair competition;
- BB. Enjoin defendants from committing or engaging in any acts that constitute unfair competition;
- CC. Order defendants to recall any merchandise or equipment that has been illegally placed into the stream of commerce as the result of any unfair competition or illegal monopolization;
- DD. Award *DISH Network*, after a trial before a jury, any and all damages, including treble damages and/or punitive damages, to which *DISH Network* may show itself entitled;
- EE. Award *DISH Network* its costs, including reasonable attorneys' fees, and any other relief, in law or equity, to which *DISH Network* may show itself entitled.

Respectfully submitted this 1 day of February, 2000.

T. WADE WELCH & ASSOCIATES

T. Wade Welch by Thomas J. Overton

T. Wade Welch
2401 Fountainview, Suite 215
Houston, Texas 77057
(713) 952-4334
(713) 952-4994 (fax)

SQUIRES, SANDERS & DEMPSEY L.L.P.

Mark A. Nadeau
40 North Central Avenue, Suite 2700
Phoenix, Arizona 85004
(602) 528-4000
(602) 253-8129 (fax)

ATTORNEYS FOR PLAINTIFFS

Plaintiffs' Address:
David K. Moskowitz, Esq.
General Counsel and Vice President
EchoStar Communications Corporation
EchoStar Satellite Corporation
EchoStar Technologies Corporation
5701 S. Santa Fe
Littleton, Colorado 80120

REC'D DEC 8 2001

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

FILED
UNITED STATES DISTRICT COURT
DENVER, COLORADO

APR 05 2002

JAMES R. MANSPECKER
CLERK
BY _____
DEP. CLERK

Civil Action No. 00-K-212

ECHOSTAR COMMUNICATIONS CORPORATION,

a Nevada corporation;

ECHOSTAR SATELLITE CORPORATION, a Colorado corporation;

and ECHOSTAR TECHNOLOGIES CORPORATION, a Texas corporation.

RECEIVED

Plaintiffs.

FEB 20 2002

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

v.

DIRECTV ENTERPRISES, INC., a Delaware corporation;

DIRECTV, INC., a California corporation; DIRECTV

MERCHANDISING, INC., a Delaware corporation;

DIRECTV OPERATIONS, INC., a California corporation;

HUGHES NETWORK SYSTEMS, a Delaware corporation;

THOMSON CONSUMER ELECTRONICS, INC.,

d/b/a. RCA, a Delaware corporation;

RADIOSHACK CORPORATION, a Delaware corporation;

CIRCUIT CITY STORES INC., a Virginia corporation;

and BEST BUY CO., INC., a Minnesota corporation.

Defendants.

JURY TRIAL DEMANDED

AMENDED COMPLAINT

Plaintiffs EchoStar Communications Corporation, EchoStar Satellite Corporation and EchoStar Technologies Corporation (collectively, "EchoStar" or "Plaintiffs"), by and through their attorneys, Boies, Schiller & Flexner LLP and T. Wade Welch & Associates, bring this action against Defendants DirecTV Enterprises, Inc.; DirecTV, Inc.; DirecTV Merchandising,

2/8

Inc.; DirecTV Operations, Inc.; Hughes Network Systems ("Hughes") (collectively, "DirecTV" or the "DirecTV Defendants"); Thomson Consumer Electronics, Inc. d/b/a RCA ("RCA"); and RadioShack Corporation ("RadioShack"); Circuit City Stores, Inc. ("Circuit City"); and Best Buy Co., Inc. ("Best Buy") (the "National Exclusive Retailers," and collectively with the DirecTV Defendants and RCA, the "Defendants"), and allege, upon information as to themselves and statements made in their presence, and upon information and belief as to all other matters, as follows:

PRELIMINARY STATEMENT

1. This action arises from DirecTV's illegal efforts to preclude competition on the merits in the market for high-power direct broadcast satellite ("DBS") television equipment and service. Since the inception of high-power DBS service, DirecTV has occupied a dominant market position. Initially, and for a period of approximately eighteen months, DirecTV was the sole provider of high-power DBS service in the United States. After EchoStar's entry introduced the potential for competition in the High-Power DBS Market, DirecTV decided wherever possible to prevent competition on the merits, and to engage in a pattern of exclusionary and predatory conduct that utilized its preexisting dominance (and maintained that dominance). As a result, DirecTV still occupies a 65% share of the market for high-power DBS equipment and service.

2. DirecTV's exclusionary and predatory conduct consists, among other things, of interrelated coercive threats and artificially inflated payments:

- (a) To induce major national electronics retailers RadioShack, Circuit City and Best Buy (the "National Exclusive Retailers") to boycott DirecTV's competitors and their superior alternative products, including EchoStar's DISH Network;
- (b) To keep other retailers, including numerous national and local electronics retailers, from distributing EchoStar's service and EchoStar-compatible equipment;
- (c) To bar the National Football League ("NFL") and other professional sports leagues from contracting with EchoStar, and from even entertaining potential offers that EchoStar may wish to make in the future;
- (d) To prevent RCA and other manufacturers of high-definition televisions ("HDTVs") from making their HDTVs compatible with high-power DBS service other than DirecTV's; and
- (e) To ensure that HDTVs produced by RCA and other manufacturers are not sold by retailers that choose to sell EchoStar products and services.

3. The National Exclusive Retailers have not merely acceded to DirecTV's threats and inducements, but have done so mutually and by horizontal agreement: they have mutually agreed that each will carry only the DBS products and services of DirecTV, and not of any other high-power DBS provider. In a freely competitive market, the natural incentives of retailers are to offer the highest quality products, thereby both ensuring consumers' welfare as well their own competitiveness with other retailers doing the same. By removing the principal threat to which individual acquiescence to DirecTV's terms would otherwise expose any one of them -- the threat that a competing retailer of comparable stature would heighten competition, and gain competitive advantage, by carrying EchoStar's superior products and services -- the boycott of

DirecTV's high-power DBS competitor has undercut the retailers' ordinary competitive incentive, and with it the consumer benefits it ordinarily generates.

4. In addition to joining the conspiracy, DirecTV has facilitated the boycott, including by acting as conduit for some of the requisite assurances among the horizontally related parties. Over and above adhering to the terms of the boycott, the National Exclusive Retailers provide information to DirecTV about retailers who carry competing goods, such as EchoStar equipment and service, so that DirecTV may terminate their contracts and otherwise penalize them, including by withholding from them money attributable to their past sales of DirecTV products, and by acting in concert with others to deprive them of access to other important products.

5. Defendants' conduct has successfully foreclosed competition in the most significant high-power DBS equipment and service distribution channels. Although EchoStar has grown remarkably since launching its DISH Network in March 1996, DirecTV's anticompetitive and unlawful conduct has imposed heightened costs on EchoStar and otherwise erected substantial impediments to EchoStar's ability to offer its superior product and to provide consumers with the (superior) alternatives and options that a competitive regime is designed to make available. Despite EchoStar's success, DTV's anti-competitive and illegal conduct has prevented, and continues to prevent, EchoStar from gaining customers for its services and its equipment that it otherwise would have had, and from otherwise effectively and legitimately competing with DirecTV in the High-Power DBS market.

6. As a result of their predatory, unreasonable and per se illegal conduct, Defendants have deprived millions of consumers of a meaningful choice on the merits among competing high-power DBS equipment and service, imposing extensive harm of the type the antitrust laws were designed to prevent.

PARTIES

7. Plaintiff EchoStar Communications Corporation ("ECC") is a Nevada corporation. ECC is a leading high-power DBS programming service provider.

8. Plaintiff EchoStar Satellite Corporation ("ESC") is a Colorado corporation.

9. ECC and ESC have their principal place of business at 5701 South Santa Fe, Littleton, Colorado 80120.

10. Plaintiff EchoStar Technologies Corporation ("ETC") is a Texas corporation that is a wholly owned subsidiary of ECC. ETC is a leader in the field of high-tech digital satellite receiver design. ETC designs, engineers and oversees the manufacturing of high-power DBS dish antennas, receivers and other digital equipment that permit subscribers to receive ECC's DISH Network high-power DBS programming service. ETC has its principal place of business in Englewood, Colorado.

11. Defendants DirecTV Enterprises, Inc. and DirecTV Merchandising, Inc. are Delaware corporations with their principal place of business at 225 E. Imperial Highway, El Segundo, California 90245.

12. Defendants DirecTV, Inc. and DirecTV Operations, Inc. are California corporations with their principal place of business at 2230 E. Imperial Highway, El Segundo, California 90245. DirecTV, Inc. operates its Broadcast Center in Castle Rock, Colorado 80104, and maintains a regional office in Denver, Colorado 80202.

13. DirecTV, Inc., DirecTV Merchandising, Inc. and DirecTV Operations, Inc. are all, directly or indirectly, wholly owned subsidiaries of DirecTV Enterprises, Inc.

14. Defendant Hughes is a Delaware corporation with its principal place of business at 11717 Exploration Lane, Germantown, Maryland 20876.

15. Defendant Thomson Consumer Electronics, Inc. is a Delaware corporation with its principal place of business at 10330 North Meridian Street, Indianapolis, Indiana 46290. Thomson Consumer Electronics, Inc. does business as RCA.

16. Defendant RadioShack is a Delaware corporation with its principal place of business at 100 Throckmorton Street, Suite 1800, Fort Worth, Texas 76102.

17. Defendant Circuit City is a Virginia corporation with its principal place of business at 9950 Mayland Drive, Richmond, Virginia 23233.

18. Defendant Best Buy is a Minnesota corporation with its principal place of business at 7075 Flying Cloud Drive, Eden Prairie, Minnesota 55344.

19. Each of Defendants RadioShack, Circuit City and Best Buy is a principal competitor of the other in the sale of high-power DBS equipment and services. At least a

substantial amount of the competition faced by any member of the group would, in the ordinary course, be supplied by other members of the group.

JURISDICTION AND VENUE

20. Plaintiffs bring this action pursuant to Sections 1 and 2 of the Sherman Act, 15 U.S.C. §§ 1 and 2; Section 3 of the Clayton Act, 15 U.S.C. § 14; Section 43(a) of the Lanham Act, 15 U.S.C. § 1125(a)(1)(B); the Colorado Antitrust Act of 1992, Col. Rev. Stat. § 6-4-101 et seq.; the Colorado Consumer Protection Act, Col. Rev. Stat. § 6-1-101 et seq.; California Business and Professions Code §§ 16720, 16750, 17200 and 17203; and under the common law doctrines of tortious interference with contract, tortious interference with prospective contractual relations, trade libel and unfair competition.

21. This Court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. §§ 1331, 1337(a) and 1367(a), insofar as Plaintiffs' First through Seventh claims for relief arise under federal statutes, inter alia, the Sherman Act, the Clayton Act and the Lanham Act; and Plaintiffs' Eighth through Nineteenth claims for relief are so related to Plaintiffs' federal law claims that they form part of the same case and controversy.

22. Defendants are subject to personal jurisdiction in this District pursuant to Col. Rev. Stat. § 13-1-124, because they are authorized to transact and in fact have transacted business within the State of Colorado; own, use or possess real property within the State of Colorado; have committed tortious acts within the State of Colorado or have committed tortious acts that have caused injury and damage within the State of Colorado, and have sufficient contacts with the State of Colorado and have purposefully availed themselves of the benefits and privileges of

conducting business in the State of Colorado such that this Court's exercise of jurisdiction comports with due process.

23. Among other contacts, DirecTV provides subscription television programming to thousands of Colorado citizens on a continuous basis, and DirecTV, Inc. operates an uplink center in Castle Rock, Colorado. DirecTV derives substantial revenues by selling equipment and distributing programming to consumers in Colorado and nationwide. Hughes acts in concert with DirecTV on a nationwide basis to sell products and exert market influence within Colorado. RCA maintains sales and service offices in Denver, Colorado. RCA, RadioShack, Circuit City and Best Buy each derive substantial revenue from the sale of electronic equipment, including high-power DBS equipment, in Colorado and nationwide. RadioShack, Circuit City and Best Buy each maintain one or more retail stores in Colorado.

24. Venue in this District is proper pursuant to 28 U.S.C. § 1391(b) and (c), and 15 U.S.C. §§ 15 and 22, inasmuch as all Defendants are corporations that are subject to personal jurisdiction in this District and therefore are deemed to reside in this District, and a substantial part of the events and omissions giving rise to Plaintiffs' claims herein occurred in this District.

25. Defendants' activities, as alleged herein, were and are within the flow of interstate commerce, and were and are intended to, did and do have a direct, substantial and reasonably foreseeable effect on interstate commerce within the United States.

STATEMENT OF FACTS

26. High-power DBS is a revolutionary technology that has changed the way many consumers watch television. High-power DBS provides hundreds of channels of digital-crisp picture and sound directly to viewers, without an expensive and limited network of cables or local broadcast antennas. The illegal practices in which DirecTV has engaged have been -- and, unchecked, would continue to be -- harmful to competition in this young market for an important emerging technology.

The Limits of Broadcast and Cable Television Service

27. Before the advent of DBS, television signals were sent by either broadcast or cable. Broadcast television relies on local, over-the-air transmissions to offer free access to a handful of channels. Cable service providers use miles of cable and signal boosters to deliver, for a fee, an increased number of channels. Cable service has gained in prominence over the past thirty years: households subscribing to cable television now number in the tens of millions.

28. Both cable service and over-the-air broadcasts, however, remain subject to significant limitations that impair their suitability for many consumers. For example, both suffer a decline in quality as the signal travels farther from its source. Local broadcasting still only offers a few channels, and most cable TV systems carry fewer than one hundred. Further, cable rates and costs have increased steadily, causing many consumers to view cable as a poor value proposition. Moreover, both cable and local broadcasts are geographically limited: local broadcasts reach only viewers able to receive the signal and cable TV can only serve subscribers whose homes are or can be connected to a cable system's network of cables and boosters. Thus,

although many American households have access to cable and over-the-air broadcasts, and others have access to one or the other, millions have access to neither.

Direct-to-Home Satellite Service Emerges
To Serve Customers Beyond the Cable Infrastructure

29. The shortcomings of cable TV and traditional over-the-air TV broadcasts led to the accelerated development of a new technology for distribution of television programming: direct-to-home satellite service.

30. When direct-to-home satellite service premiered in the late 1970s, it utilized C-band frequency satellites. The low power of C-band signals required the consumer to use a backyard dish antenna four to eight feet in diameter, which was both ungainly and difficult to install in densely populated areas. Indeed, the size and cost of these dish antennas have rendered C-band technology largely obsolete.

31. In 1989, the first generation of DBS technology emerged, known as medium-power DBS. DBS works through the transmission of TV signals from one or more geostationary satellites directly to a dish antenna located at the customer's residence. Medium-power DBS required a smaller dish antenna that was 27" to 39" in diameter.

32. The first (and only significant) provider of medium-power DBS equipment and programming was Primestar, which DirecTV acquired in 1999. At its peak, Primestar offered approximately 140 channels to 1.8 million subscribers. Although Primestar currently continues limited operations -- its subscribers now number fewer than 110,000 -- DirecTV has been attempting to upgrade Primestar customers to its own high-power DBS equipment and service.

At present, Primestar is the only medium-power DBS service available in the United States, and no new medium-power DBS service is expected to be developed.

High-Power DBS Makes Direct-to-Home Satellite Service
Available with a Small Dish Antenna and at a Lower Cost

33. High-power DBS operates in a higher frequency range (the Ku-band) than C-band and medium-power DBS. Using these higher frequencies and higher power, as well as wide spacing between satellites, high-power DBS can deliver video programming directly to an 18" to 24" diameter dish at the subscriber's home. This smaller dish antenna size makes location and installation of a high-power DBS dish antenna more feasible than a C-band or even a medium-power DBS dish antenna.

34. As compared to the most prevalent cable systems, high-power DBS offers many more channels and significantly improved, CD-quality video and audio. Through enhanced digital compression, the high-power DBS subscriber can choose from an unprecedented array of movie channels, sports programming, news and information programming, family and educational programming, pay-per-view programming, foreign language programming, religious programming, other special interest programming, HDTV broadcasts, and, in some instances, local independent and network-affiliated channels. Several of the premium movie services that originated in the cable environment, such as HBO, Cinemax, Showtime, The Movie Channel and The Disney Channel, offer high-power DBS subscribers multiple channels with different programming schedules.

35. In 1994, DirecTV offered the first high-power DBS system. DirecTV remained the sole provider of high-power DBS service and equipment for its first eighteen months in operation. Following years of planning and hundreds of millions of dollars in advance capital investment, on December 28, 1995, EchoStar successfully launched its first high-power DBS satellite. Shortly thereafter, in March 1996, EchoStar introduced DISH Network, its high-power DBS programming service.

36. EchoStar's DISH Network offers two hundred more channels than DirecTV and has a significantly better record for customer service. DISH Network also offers local broadcast channels by satellite in thirty-three markets around the country, substantially more than DirecTV. DISH Network ranked number one in customer satisfaction surveys by J.D. Power & Associates in both 1999 and 2000.

DEFENDANTS' ANTI-COMPETITIVE CONDUCT

37. To avoid having to compete with EchoStar on the merits, and in order to raise its new rival's costs, DirecTV has engaged in a broad array of predatory, unreasonable and per se illegal conduct. Each feature of this range of illegal conduct is designed to and does reinforce the anti-competitive impact of the others. This conduct has effectively prevented EchoStar, despite the superior quality and attractiveness of its service, from bringing optimal competitive benefits to consumers and materially diminishing DirecTV's monopoly power. Indeed, DirecTV has continually utilized that very power to secure the arrangements that perpetuate it.

38. First, DirecTV has substantially foreclosed competition by securing with electronics retailers a series of exclusive-dealing contracts whose anti-competitive design and effect outweigh any pro-competitive justification. Second, DirecTV has engineered a group boycott of EchoStar's equipment by major retailers. Third, DirecTV has conspired with most of the major HDTV manufacturers to exclude EchoStar from the new and important HDTV market by paying the manufacturers to build products specifically designed to be incompatible with DISH Network, and has used its influence with these manufacturers to threaten retailers that carry EchoStar's equipment and service with exclusion from the market for HDTVs. Fourth, DirecTV has paid major sports leagues to refuse even to accept bids from EchoStar for current or future sports programming rights. Fifth, DirecTV has engaged in wide-ranging unfair competition, including falsely disparaging EchoStar's equipment and service.

39. Viewed independently, each of these aspects of DirecTV's conduct unreasonably restrains trade because it substantially forecloses competition in the market for high-power DBS equipment and service, perpetuates DirecTV's monopoly in that market, and diminishes consumer choice. Taken together, these various schemes have even more anti-competitive force. None of them, alone or together, has any legitimate business justification or serves any pro-competitive objective that could not be achieved through substantially less restrictive means.

DirecTV Coerces and Improperly Induces Electronics Retailers
 To Exclude EchoStar Products and Services

40. DirecTV sells a substantial amount of its high-power DBS equipment, and corresponding programming service subscriptions, through consumer electronics retailers that, in exchange for rebates, activation payments and residuals, among other things, have agreed to sell DirecTV-compatible equipment exclusively.

41. For instance, large-chain national electronics retailers ("National Chain Retailers"), such as RadioShack, Circuit City and Best Buy, offer a distinctive range of products and services. Perhaps for this reason, they transact a substantial percentage of all home electronics sales in the United States each year.

42. DirecTV has secured a series of agreements with the National Exclusive Retailers, pursuant to which the Retailers agree not to promote or offer EchoStar's equipment and service. In exchange, the National Exclusive Retailers receive a variety of inducements, including cash payments or rebates for each DirecTV-compatible receiver they sell. They also receive a percentage of DirecTV's future high-power DBS service profits through a residuals program. The sizes of these rebates and residuals are tied to the National Exclusive Retailers' express agreement to promote or sell only DirecTV high-power DBS equipment and service and not to promote or sell EchoStar equipment or service. The agreements impose no exclusivity obligation on DirecTV, which is free to sell and market its services through as many retailers as it wants.

43. DirecTV has also employed a variety of threats to secure these exclusive-dealing relationships and enforce effectively indefinite adherence to them. DirecTV has threatened to

withhold supplies of its products from retailers that sell competitors' high-power DBS service and equipment, and has terminated contracts with retailers that have chosen or attempted to deal with EchoStar. Indeed, in response to DirecTV's threats, several consumer electronics outlets that previously sold both DirecTV and EchoStar high-power DBS service and equipment either terminated their sales of EchoStar-compatible receiving equipment or have informed EchoStar of their intention to do so. To coerce agreement, DirecTV has also threatened non-exclusive retailers with refusal to pay residual payments already earned. Once a retailer has joined the boycott, DirecTV polices adherence further by threatening termination of residuals should that firm choose to deal with a competitor of DirecTV. Thus, DirecTV has sought to impose effectively indefinite terms on its exclusive-dealing contracts.

44. DirecTV's exclusive-dealing contracts with the retailers have also been supplemented and reinforced by an enforced understanding between each retailer and RCA, pursuant to which retailers will lose the ability to carry RCA HDTVs if they do not exclude the goods and services of EchoStar, and subject to the threat that they otherwise would be denied RCA HDTVs. DirecTV has also used its exclusive arrangements with other HDTV manufacturers, as explained in detail below, to threaten retailers with exclusion from access to supplies of HDTVs.

45. The anti-competitive purpose and effect of DirecTV's exclusive-dealing program outweigh any conceivable sales efficiencies or other economic advantages over a naturally competitive market.